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In The

Supreme Court of the United States

October Term, 1982

**GEORGE BANTA COMPANY, INC.,
BANTA DIVISION,**

Petitioner,

vs.

**NATIONAL LABOR RELATIONS BOARD,
and
TRI-CITIES LOCAL 382,
GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO,**
Respondents.

**BRIEF OF RESPONDENT TRI-CITIES LOCAL 382,
GRAPHIC ARTS INTERNATIONAL UNION, AFL-CIO,
IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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Respondent Tri-Cities Local 382, Graphic Arts International Union, AFL-CIO, urges the Court to deny the petition for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the District of Columbia Circuit. Contrary to Petitioner's claims, the decision below follows the prior decisions of this Court, creates no conflict among the circuits, and raises no question of law to be resolved by this Court.

STATEMENT OF THE CASE

Petitioner George Banta Company, Inc. (hereafter referred to as "the Company"), is a printer, located in Menasha,

Wisconsin. The Company's bindery and lithographic employees have for many years been represented by Locals 32-B and 88-L of the Graphic Arts International Union, AFL-CIO, since merged to form Tri-Cities Local 382, Graphic Arts International Union, AFL-CIO (hereafter referred to as "the Union").

The 1974-1977 collective bargaining agreements between the Company and Locals 32-B and 88-L expired on April 3, 1977. The parties were in the middle of negotiations on April 3, 1977; as soon as the contracts expired, the Company unilaterally implemented its last contract offers. All of the employees struck in response, and their strike lasted from April 4 to October 8, 1977. The Union filed unfair labor practice charges on April 13, 1977, and the General Counsel to the National Labor Relations Board issued a complaint alleging that the Company's unilateral action was illegal and that the employees' strike was an unfair labor practice strike.

This complaint was subsequently settled by a formal Settlement Stipulation between the Company, the Union, and the General Counsel, in which the Company agreed to rescind its unilateral action and agreed to the entry of a Board order establishing that the striking employees had reinstatement rights equivalent to those of unfair labor practice strikers.

In October, 1977 negotiations ending the strike, the Company insisted on a "preferential reinstatement system" which would give employees who had abandoned the strike an absolute preference in recall to their pre-strike jobs, and would systematically discriminate between strikers and non-strikers in seniority rights, job assignments, and wages. When the Company refused to implement the agreed-upon labor contracts without these discriminatory policies, which it stated it intended to implement in any event, the Unions signed the "preferential reinstatement system" under

protest, as a separate document and with an express reservation of their rights to challenge it as violating their members' rights under the Act and the Settlement Stipulation. (Appendix B, pp. 60, 79-80; Appendix E, pp. 8-9).

After the strike, the Company immediately began a program of systematic discrimination among employees in recall to work, job assignments, and recognition of contractual rights, based solely on whether or not the employees had crossed the picket line. The Unions filed new unfair labor practice charges concerning this post-strike discrimination. In response to the Unions' charges, the Company attempted to "withdraw" from the formal Board settlement of the earlier complaint against it, notwithstanding that the settlement had been signed by all parties, and the Company's settlement commitments had been explicitly relied upon by the General Counsel in terminating injunction proceedings against the Company, and by the Union and the employees in terminating their strike. (Appendix A, pp. 5-6; G.C. Exh. 12).

The Company's Post-Strike Conduct

Nowhere in its petition does the Company discuss the post-strike conduct which the Board found to be "more pervasive than the plan condemned in *Erie Resistor*" (Appendix B, p. 75), and to constitute "widespread and egregious" violations of the Act (Appendix B, p. 94). The Board's factual findings of systematic discrimination against former strikers, and in favor of those employees who resigned from the Union and crossed the picket line ("cross-overs" or, as the Company chose to call them, "white hats"—Tr. 127, 344, 390) were not contested before the Court of Appeals, nor are they here:

Discrimination in Initial Recall. The Company systematically insulated all cross-overs from the competition for available post-strike jobs, rather than following the contractual requirement of non-discriminatorily allocating jobs by seniority. (See Appendix B, pp. 65-67, 76-78). This absolute preference to "cross-overs" in reinstatement, like the other

discriminatory practices, was found to be totally unrelated to any production requirements or other business justification. (See Appendix B, p. 79).

Post-Recall Discrimination in Recognition of Seniority. Even after their discriminatorily delayed recall to the plant, former strikers continued to be systematically discriminated against in job assignments. Strikers' seniority was ignored in favor of cross-overs with less seniority. All cross-overs were reinstated to their pre-strike jobs, regardless of the work available, or what they actually did during the strike; returning strikers were assigned to only the remaining jobs. (See Appendix B, pp. 66-67, 71-72, 77-78). This post-reinstatement discrimination was pervasive and continuing: *one year after the end of the strike*, 153 senior bindery employees, 127 senior pressroom employees, and 45 of the 58 preparatory employees, all of whom were strikers, were still working at lower paying jobs below cross-overs with less seniority (G.C. Exhs. 54(b), 55(c), 56(b)).

Post-Recall Discrimination in Recognition of Machine Seniority. Under the parties' contract, preference among machine operators is determined by their relative "machine seniority." Even after recall, the Company refused to recognize former strikers' machine seniority vis-a-vis cross-overs, some of whom had no seniority at all on the equipment to which they were assigned. (See Appendix B, p. 70, n.34, p. 78).¹

Post-Recall Discrimination in Recognition of Rate Retention. By contract, employees retain their full contract rate when assigned to other jobs. All cross-overs received full rate retention at pre-strike rates, even if they had not yet returned to operate their pre-strike equipment. Most returning strikers did not have their rate retention rights

¹ In Appendix B to its petition, the Company has renumbered the footnotes in the Administrative Law Judge's Decision. Reference is made here to the footnotes as numbered in Appendix B, not as in the original or published Decision.

recognized, even if they were performing their pre-strike jobs on a full-time basis. (See Appendix B, pp. 67-68, 72, 78).

Post-Recall Discrimination in the Application of Permanency Requirements. The Company required returning strikers to re-qualify for their pre-strike rate of pay under contractual standards of permanency normally applied only to new employees. None of the cross-overs was required to satisfy this requirement. (See Appendix B, pp. 68, 78).

Post-Recall Discrimination in the Recognition of "Displaced Persons" Status. The Local 32-B contract provided full rate retention for "displaced persons," that is, employees whose machines or jobs had been eliminated. The Company recognized contractual displaced persons status for cross-overs, and refused to recognize it for any former striker. (See Appendix B, pp. 68-70, 72-73, 78).

The Complaint and Hearing

On March 8, 1978, the General Counsel issued the complaint against the Company in this case. The allegations of massive post-strike discrimination were made without reference to the nature of the strike or the ultimate disposition of the challenged Settlement Stipulation.² Hearing on these allegations was held before Administrative Law Judge

² After complaint had issued, on July 14, 1978, the Board ruled that the Company could not withdraw from the Settlement Stipulation, and entered the Order to which the parties had agreed, confirming, among other things, the strikers' status for purposes of reinstatement. *George Banta Company, Inc., Banta Division*, 236 NLRB 1559. The Company immediately appealed to the United States Court of Appeals for the Fourth Circuit, and continued to argue that it was not bound by the settlement. The Company's appeal was still pending when hearing in this case opened before Administrative Law Judge Itkin on August 21, 1978.

Frank H. Itkin on 17 days between August 21 and November 7, 1978.³

Administrative Law Judge Itkin's Decision

On October 15, 1979, Administrative Law Judge Itkin issued his 76-page decision. Judge Itkin found the Company's post-strike discrimination to be illegal as alleged on two alternative theories:⁴

1. First, Judge Itkin found that the Company's post-strike reinstatement practices were "inherently discriminatory and unlawful," without reference to the Settlement Agreement and regardless of whether the strikers were considered to be economic strikers or unfair labor practice strikers (Appendix B, pp. 80-81).

2. Alternatively, Judge Itkin found that even if the legality of the Company's post-strike conduct were found to depend on the strikers' legal status, their rights to reinstatement as unfair labor practice strikers had been established by the Board Order incorporating the agreed-upon Settlement Stipulation (Appendix B, pp. 52, 74, n.36).

³On August 6, 1979, while the matter was pending before Judge Itkin for decision, the United States Court of Appeals for the Fourth Circuit issued its decision in *George Banta Co., Inc., Banta Division v. N.L.R.B.*, 604 F.2d 830 (4th Cir. 1979), denying the Company's attempt to renege on its settlement commitments and enforcing the agreed-upon Board order. The Company immediately petitioned for a rehearing and later petitioned the United States Supreme Court to issue a writ of certiorari, both of which petitions were denied. 445 U.S. 927 (1980).

⁴Other parts of Judge Itkin's Decision, not relevant here, involved findings concerning the Company's unilateral action of April, 1977, which the Board had ordered the Judge to make in the event the Company was successful in its continuing challenge to the Settlement Stipulation in the Fourth Circuit; and findings with respect to the discharge of six strikers for alleged misconduct.

The National Labor Relations Board's Decision

On July 16, 1981, a unanimous panel of the National Labor Relations Board affirmed the rulings, findings, and conclusions of Administrative Law Judge Itkin and adopted his recommended order without modification. The Board's only abstention from the Judge's decision is in footnote 4 to its decision where the Board finds it unnecessary to decide whether bargaining impasse had occurred in April, 1977 or whether the strike was an economic or an unfair practice strike since—as the Judge had ruled—the strikers' reinstatement rights had been determined by the Board Order in *George Banta Company, Inc., Banta Division*, 236 NLRB 1559 (1978), enforced, 604 F.2d 830 (4th Cir. 1979), *cert. denied*, 445 U.S. 927 (1980). (Appendix B, p. 2, n.4). The Board *did* not exempt from its blanket affirmance of the Judge's decision his findings and conclusions that the Company's reinstatement policies were illegal under *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221 (1963), without regard to the status of the strikers.

The Board adopted, without exception, the central holding of Administrative Law Judge Itkin (Appendix B, p. 78):

In sum, the Employer's reinstatement plan, as implemented, awarded substantial priority to the "cross-overs." Strikers were only recalled to remaining jobs. "Cross-overs" were reinstated to pre-strike positions and returning strikers at the strike's end were in significant part recalled to lower-rated positions. "Cross-overs" retained and received full contractual rate-retention rights to their pre-strike jobs; however, returning strikers were often required to meet tests of permanency in order to have rate-retention status to various higher-rated jobs. Returning strikers were similarly denied displaced persons and machine seniority rights by operation of this plan.

A reinstatement plan predicated so heavily upon a distinction between employees who abandoned the strike

(during the weeks before the strike's end) and those employees who remained on strike until the strike's end, is inherently discriminatory and unlawful under the *Erie Resistor* rationale.

The Court of Appeals' Decision

The Company elected this time to petition for review to the United States Court of Appeals for the District of Columbia. On August 13, 1982, a unanimous panel of the United States Court of Appeals issued its 28-page decision, denying the Company's petition and enforcing the Board's order in its entirety. The Court of Appeals upheld both of the alternative bases of the Board's decision, finding that there was a "proliferation of grounds for finding Banta's PRS unlawful" (Appendix A, p. 10). The Court of Appeals confirmed that the parties' Settlement Agreement had established the employees' reinstatement rights as those of unfair labor practice strikers (Appendix A, p. 14, n.8), and that the Company's systematic post-strike discrimination violated those rights (Appendix A, pp. 11-15). In addition, the Court of Appeals upheld the Board's and the Judge's alternative theory of liability, that the Company's post-strike discrimination was illegal under *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221 (1963), and its progeny, regardless of whether the strikers were found to have the reinstatement rights of economic strikers or of unfair labor practice strikers (Appendix A, pp. 15-27).

THE PETITION SHOULD BE DENIED

I. The Company's Due Process Rights Were Not Violated

The Company's claim that the National Labor Relations Board based its finding of liability on allegations not included in the Complaint and not litigated at the hearing is simply false. There is absolutely no discrepancy between the statutory violations alleged in the Complaint and the ultimate findings of the Board. The Complaint specifically alleged that the Company violated Section 8(a)(3) of the Act,

29 U.S.C. § 158(a)(3), as follows (G.C. Exh. 1(e), ¶ 16; See Appendix B, p. 8):

16. [Banta] engaged in the following conduct on or about the dates set forth below, all of which was directed against its employees who had engaged in the strike against [Banta] until it was abandoned by the [Union] because of such employees' Union and/or other concerted activities protected by Section 7 of the Act:

(a) On or about October 10, 1977, and thereafter, [Banta] granted, and continues to grant, preferential reinstatement rights or preferential seniority rights to jobs and rates of pay to those employees who had abandoned the above-described strike and who offered to or did return to work at [Banta] before the [Unions] abandoned the strike against [Banta].

(b) On or about October 10, 1977, and thereafter, [Banta] denied seniority and the benefits of seniority for purposes of job assignment and computation of rates of pay to those employees who had engaged in the strike against [Banta] until abandoned by [the Unions].

In 17 full days of hearing, these *precise* allegations were exhaustively litigated: how cross-overs and strikers were reinstated; when they were reinstated; the jobs to which they were assigned and the wages they were paid; their subsequent changes in jobs and wages; the treatment of strikers' and cross-overs' seniority and other contractual rights; effects of the "preferential reinstatement system" on other terms and conditions of employment; the parties' reinstatement practices in past strikes; and the Company's purported defenses of waiver and business justification.

Based on this exhaustively developed record, Administrative Law Judge Itkin made his extensive findings of fact. *These findings and conclusions, adopted unanimously by the Board, correspond precisely with the allegations of the Complaint* (Appendix B, pp. 81, 93, footnotes omitted):

In sum, I find and conclude that Respondent violated Section 8(a)(1) and (3) of the Act by granting from on or about October 10, 1977, and thereafter, preferential reinstatement rights and preferential seniority rights to jobs and rates of pay to those employees who had abandoned the strike before strike's end and, further, by denying seniority and the benefits of seniority for purposes of job assignment and computation of rates of pay to those employees who remained on strike until strike's end.

* * * * *

Conclusions of Law

* * * * *

3. Respondent Company violated Section (8)(a)(1) and (3) of the Act by granting from on or about October 10, 1977, and thereafter, preferential reinstatement rights and preferential seniority rights to jobs and rates of pay to those employees who had abandoned the strike with the Unions (which had commenced on April 4, 1977) before the strike's end on October 8, 1977, and, further, by denying seniority and the benefits of seniority for purposes of job assignment and computation of rates of pay to those employees who remained on strike until the strike's end.

The cases cited by the Company—where the Board found violations of the Act which were neither alleged in the Complaint nor litigated at hearing—are inapposite. The Board's findings of fact and conclusions of law track the allegations of the Complaint; they were fully litigated; they are overwhelmingly supported by the record evidence.

The Administrative Law Judge, the unanimous National Labor Relations Board panel, and the unanimous Court of Appeals panel also properly rejected the Company's collateral argument that its due process rights were somehow violated when its "preferential reinstatement system" was

found to be illegal whether the strikers were considered to be unfair labor practice strikers or economic strikers.

In the first place, as set forth above, the allegations of illegality in the Complaint are unequivocal, and not dependent on any subsidiary allegations as to the strikers' status. As the Court of Appeals noted, "Nothing in the Complaint suggested that the legality of this conduct depended on whether the strike concerned unfair labor practices." (Appendix A, p. 22). In addition, all of the facts with respect to the challenged reinstatement policies, including their operation, their impact on the strikers and cross-overs, and their purported justifications by the Company, were fully litigated. As the Court of Appeals correctly found, the Company cannot claim that it was in any way prejudiced in the full presentation of its evidence (Appendix A, p. 22).

Finally, as the Court of Appeals and the Board also found, the Company had full notice of the legal arguments and theories being made in support of the allegations of the Complaint. Before the hearing began, Administrative Law Judge Itkin expressly ruled that the employees' post-strike reinstatement rights would be treated as determined by the parties' prior settlement agreement (ALJ Exh. 2; Appendix A, p. 13). This ruling was expressly concurred in by counsel for the General Counsel (ALJ Exh. 3), and was affirmed by the Board itself on the Company's interim appeal (ALJ Exh. 7). The Company's "due process" argument that it did not know that it would be held accountable for its own settlement commitments was properly rejected both as a matter of law and as a matter of fact.

The Company was also on notice of the alternative legal theory that the "preferential reinstatement system" was illegal regardless of whether the strikers were found to be unfair labor practice strikers or economic strikers. The Charging Party Union consistently advanced this legal argument from the outset in support of the Complaint's allegations. As the Court of Appeals properly ruled, "A charging party has the statutory right to 'propound theories which the

general counsel fails or refuses to rely upon,' *International Union of Electrical Workers v. N.L.R.B.*, 289 F.2d 757, 760 (D.C. Cir. 1960), and the ALJ and the Board are permitted to accept or reject these theories in their adjudicatory function." (Appendix A, p. 23, n.16).⁵

The findings of the Board are in full harmony with the allegations of the Complaint and were fully and fairly tried by the parties. They cannot be challenged on due process grounds.

II. The Unanimous Decisions of the Court of Appeals and the National Labor Relations Board Are Fully Compatible With Established Labor Policy

Stripped to its fundamentals, the Board's decision and order, enforced by the Court of Appeals, requires the Company not to discriminate among its pre-strike employees based on whether or not they engaged in protected activity. More specifically, the Company cannot grant superseniority among its pre-strike employees, for purposes of post-strike job assignments and wages, based on whether or not the employees remained on strike or crossed the picket line. The unanimous decisions of the National Labor Relations Board and the Court of Appeals are consistent with the policy of the National Labor Relations Act, and the decisions of this Court, including *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221 (1963). Indeed, such a policy of non-discrimination is the only feasible way of complying with the central mandate of Section 7 of the Act, jointly guaranteeing the rights of

⁵The Court of Appeals also correctly held (Appendix A, pp. 25-26, n.17) that the Board and Judge did not invade the General Counsel's prosecutorial functions by determining that the Company's action was illegal precisely as alleged in the Complaint. Rather, acceptance of the Company's argument that the Board *cannot* make such findings, alleged in the Complaint and fully litigated on the record, would clearly have been an improper infringement on the Board's fundamental adjudicatory rights.

employees to engage in protected activities and not to engage in such activities.

The Company no longer challenges the Board's factual findings of massive and intentional discrimination. Its efforts to evade the legal requirement that it not discriminate should also be rejected.

The Company's attempt to analogize pre-strike employees who abandoned the strike and crossed the picket line to permanent replacements hired during a strike should be rejected.⁶ In the first place, since the Board (Appendix B, pp. 2, n.4, and 52), and the Court of Appeals (Appendix A, p. 14, n.8) found that the strikers had the reinstatement rights of unfair labor practice strikers by virtue of the Board order approving the settlement agreement, the Company was prohibited as a matter of law from hiring permanent replacements for the strikers. *Mastro Plastics v. N.L.R.B.*, 350 U.S. 270 (1956). But even if the strikers were deemed to have the reinstatement rights of economic strikers, the Company's argument must still be rejected. An employer's claim that it could somehow "replace" one group of pre-strike employees with another group of pre-strike employees was expressly rejected in *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 230-232 (1963), as a rationale for post-strike discrimination within a pre-strike employee group. That statutory commitment to non-discrimination, mandated by Section 7, has been consistently upheld by the courts and the Board since *Erie Resistor* in both economic strikes and unfair labor practice strikes. See, e.g., *Swan Rubber Company*, 133 NLRB 375 (1961), enforced, 303 F.2d 668 (6th Cir. 1962); *Great Lakes Carbon Corporation*, 152 NLRB 988 (1965), enforced, 360 F.2d 19 (4th Cir. 1966); *Griffin Pipe Division*, 136 NLRB 1669 (1962), enforced, 320 F.2d 656 (7th Cir. 1963); *Laclede Metal Products Co.*, 144 NLRB 15 (1963); and *Rogers Manufacturing Co.*, 197

⁶It is undisputed that no permanent replacements were hired during the strike (Appendix A, p. 21; Appendix B, p. 76). The illegal discrimination in this case occurred entirely among the pre-strike employees.

NLRB 1264 (1972), enforced, 486 F.2d 644 (6th Cir. 1973), all of which involved economic strikes.

Moreover, the courts and the Board have consistently recognized that this statutory requirement of non-discrimination may require realignment of employees by neutral principles of seniority at the end of a strike, and that such realignment may necessarily result in the temporary lay-off of junior employees in favor of senior employees. *Mastro Plastics Corp.*, 103 NLRB 511, 562 (1953), enforced, 350 U.S. 270 (1956). See also *Transport, Inc. of South Dakota*, 225 NLRB 854, 863 (1976); *Lytron, Inc.*, 207 NLRB 554, 559 (1973); *Quality Limestone Products, Inc.*, 153 NLRB 1009, 1044-1045 (1965); *Laclede Metal Products Co.*, 144 NLRB 15, 30 (1963); *Swan Rubber Company*, 133 NLRB 375, 378 (1961), enforced, 303 F.2d 668 (6th Cir. 1962). To hold otherwise would clearly violate Section 7.

Finally, the Company's reliance on the decision in *Giddings & Lewis, Inc. v. N.L.R.B.*, 675 F.2d 926 (7th Cir. 1982), is completely misplaced. In the first place, *Giddings & Lewis* involved economic strikers. In the present case, an agreed-upon Board Order enforced by the Fourth Circuit established that the employees would have the reinstatement rights of unfair labor practice strikers, and thus could not be replaced in any event. *Giddings & Lewis* itself recognized this critical distinction. 675 F.2d at 929, n.8. In addition, *Giddings & Lewis* involved the relative rights of permanent replacements and pre-strike employees, as discussed in *N.L.R.B. v. Fleetwood Trailer Co., Inc.*, 389 U.S. 375 (1967), rather than the relative rights of employees all of whom are in the pre-strike employee complement, as discussed in *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221 (1963). No permanent replacements were hired in the present case.

III. The Company's Waiver Argument Was Correctly Rejected

On October 8, 1977, the Unions accepted the Company's contract offer. Acting on the unanimous vote of their membership, the Unions *rejected* the Company's "preferential reinstatement

ment system" and stated they relied on their reinstatement rights under the Act and the Settlement Stipulation and did not waive those rights (G.C. Exh. 12). Thereafter, the Company refused to implement the agreed-upon union security, dues check off and arbitration clauses of the labor contract unless the Unions signed the "preferential reinstatement system" (G.C. Exh. 13). In response to this illegal threat,⁷ the Unions signed the document but expressly reserved their "right to present to the NLRB any question as to the legal reinstatement rights of the strikers which may not be effectuated by your proposed Preferential Reinstatement System" (Appendix E, p. 8). Company counsel expressly confirmed with the Union representatives that, "I understand that we have a contract now, but you are reserving the right to claim the PRS is illegal" (Tr. 1541). The Union's refusal to waive its members' rights was reiterated at every stage thereafter. The "preferential reinstatement system" was signed as a document separate from the labor agreement, with the October 10, 1977 letter of non-waiver appended (See Appendix E).

The Court of Appeals, the National Labor Relations Board, and the Administrative Law Judge correctly rejected the Company's waiver argument, both on the law and on the facts. As a matter of law, the Board and courts will not honor private settlements between employers and unions which purport to deny to employees the rights guaranteed to them by the Act. Under that legal principle, similar claims of waiver have been consistently rejected in other preferential reinstatement contexts. See, e.g., *Erie Resistor Corp.*, 132 NLRB 621, 631, n.31 (1961), remanded on this issue, 373 U.S. 221, 237 (1963), enforced on this issue, 328 F.2d 723, 726-727 (3rd Cir. 1964); *Griffin Pipe Division*, 136 NLRB 1669 (1962), enforced, 320 F.2d

⁷ See, e.g., *Erie Resistor Corp.*, 132 NLRB 621, 631 (1961), enforced, 373 U.S. 221 (1963); *Griffin Pipe Division*, 136 NLRB 1669, 1673-1674 (1962), enforced, 320 F.2d 656 (7th Cir. 1963); *Rogers Manufacturing Co.*, 197 NLRB 1264, 1271 (1972), enforced, 486 F.2d 644 (6th Cir. 1973); *Philip Carey Mfg. Co. v. N.L.R.B.*, 331 F.2d 720, 726-728 (6th Cir. 1964), cert. denied, 379 U.S. 888 (1964).

656 (7th Cir. 1963); *Laclede Metal Products Co.*, 144 NLRB 15, 16 (1963); *Great Lakes Carbon Corp.*, 152 NLRB 988 (1965), enforced, 360 F.2d 19 (4th Cir. 1966). See also *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 (1958).

Moreover, as the Court of Appeals, the Board, and the Judge also found, as a matter of fact the Unions never waived their right to contest the Company's actions, but expressly reserved that right, confirmed that reservation with the Company, and have aggressively sought to enforce those rights ever since (Appendix B, pp. 79-80). The Board's factual findings of non-waiver, confirmed by the Court of Appeals, are solidly supported by the record evidence.

CONCLUSION

For the foregoing reasons, Respondent Tri-Cities Local 382, Graphic Arts International Union, AFL-CIO, prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

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